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S. ACKARD

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 TECH EYES, INC., a California Corporation,) CASE NO.: **15CV289432**
12 Plaintiff,)
13 v.) COMPLAINT FOR:
14) (1) Breach of Contract
15) (2) Breach of the Implied Covenant of
16) Good Faith and Fair Dealing
17) (3) Negligence
18) (4) Promissory Estoppel
19) (5) Interference with Prospective
20) Economic Advantage
21) (6) Unfair Business Practices - Business
22) and Professions Code §17200, et seq.
23) DEMAND FOR JURY TRIAL
24)
25)
26)
27)
28)

BY FAX

Plaintiff Tech Eyes, Inc., by and through its attorneys, alleges as follows:

20 I.
21 PARTIES

22 1. Plaintiff Tech Eyes, Inc. (hereinafter "Tech Eyes" or "Plaintiff") is now and at all
23 times mentioned in this Complaint was a corporation organized under the laws of the State of
24 California.

25 2. Upon information and belief, Defendant Google, Inc. (hereinafter "Google" or
26 "Defendant") is now and at all times mentioned in this Complaint was a corporation organized
27 under the laws of the State of Delaware with a principal place of business in Santa Clara County.
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COMPLAINT

3. Plaintiff does not know the true names of Defendant Does 1 through 20 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the basis of that information and belief alleges, that each of those Defendants was in some manner legally responsible for the events and happenings alleged in this Complaint and for Plaintiff's damages. The names, capacities and relationships of Does 1 through 20 will be alleged by amendment to this Complaint when they are known.

4. Plaintiff is informed and believes, and based thereon alleges that at all times mentioned herein, Defendants and each of them, were the agents and employees of each of the remaining Defendants, and each of them, in doing the acts alleged in this complaint, were acting within the purpose and scope of said agency and employment.

5. Each Defendant is sued individually and as an agent, conspirator, aider and abettor, employee and/or control person for each of the other Defendants, and the liability of each Defendant arises from the fact that it has engaged in all or part of the unlawful acts, plans, schemes, or wrongs complained of herein and was acting within the course and scope of said agency, partnership, conspiracy, and employment.

II. JURISDICTION AND VENUE

6. This court has personal jurisdiction over Defendant Google because it conducts business in, and its principal place of business is in, the State of California. Defendant Google contracted with Plaintiff in this state, which contract further required payment to be made, and performance to be rendered, in this jurisdiction.

7. This court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, §10 of the California Constitution and Code of Civil Procedure §§410.10 and 410.50, by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds Twenty-Five Thousand Dollars (\$25,000.00) and because each

1 cause of action asserted arises under the laws of the State of California or is subject to
2 adjudication in the courts of the State of California.

3 8. Venue is proper in this court in accordance with Code of Civil Procedure §395(a)
4 because the agreement that Plaintiff Tech Eyes and Defendant Google entered into, Google's
5 breach of which is the subject of this Complaint, provides for venue in Santa Clara County. The
6 Agreement between Plaintiff and Defendant Google provides, *inter alia*, at Paragraph 12 that:
7

8 "(a) ALL CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS OR
9 THE PROGRAMS . . . WILL BE LITIGATED EXCLUSIVELY IN THE
10 FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY,
11 CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL
12 JURISDICTION IN THOSE COURTS . . ."

13 III. 14 FACTS

15 9. Tech Eyes was founded in February 2012, and operates a sports optics e-
16 commerce website selling binoculars, night-vision binoculars, rifle scopes and related items.

17 10. On May 7, 2012, Tech Eyes and Google entered into the Google Services
18 Agreement ("Agreement"), a true and correct copy of which is attached hereto as Exhibit "A,"
19 and incorporated herein by this reference.

20 11. Pursuant to the Agreement, Tech Eyes advertised on Google's AdWords platform.
21 Within approximately two and one-half years, Tech Eyes' annual gross revenues went from zero
22 to over \$2 Million. Tech Eyes' growth was driven in large measure based upon Tech Eyes'
23 advertising on Google's platform.

24 **A. Google's October 2014 Suspension of the Agreement**

25 12. On October 23, 2014, Google informed Tech Eyes that it had unilaterally
26 suspended Tech Eyes from advertising on the Google platform. The reason given to Tech Eyes
27 was that Tech Eyes sold "weapons" (specifically, knives and crossbows) on Tech Eyes' own
28 website.

1 13. Specifically, Google suspended Tech Eyes' advertisements on the Google
2 platform solely because Tech Eyes sold "weapons" on Tech Eyes' own website, and not because
3 of any Tech Eyes' advertisements for "weapons" on the Google platform.

4 14. Tech Eyes immediately removed all knives and crossbows from Tech Eyes' own
5 website.

6 15. Google then demanded that Tech Eyes remove all rifle scopes from Tech Eyes'
7 own website, which Tech Eyes also complied with. Only then did Google reinstate Tech Eyes'
8 advertising on the Google platform.

9 16. Google's demand that Tech Eyes remove rifle scopes from Tech Eyes' own
10 website devastated Tech Eyes' business, as rifle scopes account for approximately ninety percent
11 (90%) of Tech Eyes' sales.

12 ***B. Tech Eyes Restored Rifle Scopes to its Own Website***

13 17. Several months later, in the summer of 2015, Tech Eyes learned that its major
14 competitors, including but not limited to Amazon, Walmart, Cabela's and OpticsPlanet,
15 advertised rifle scopes on the Google platform.

16 18. Tech Eyes therefore restored rifle scopes, sales of which are crucial to the
17 company's survival, onto Tech Eyes' own website.

18 ***C. Google Again Suspended Tech Eyes***

19 19. Google again suspended Tech Eyes from advertising on the Google platform,
20 despite that Tech Eyes did not advertise rifle scopes on the Google platform (in contrast to its
21 major competitors), but rather only restored rifle scopes onto Tech Eyes' own website.

22 20. Google did not suspend advertising on the Google platform by Tech Eyes'
23 competitors (including but not limited to Amazon, Walmart, Cabela's and OpticsPlanet), despite
24 that those companies: (1) sold rifle scopes on their own respective websites; (2) advertised rifle
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1 scopes on the Google platform; and, (3) sold rifles and handguns on their own respective
2 websites.

3 21. Google's refusal to allow Tech Eyes to advertise on the Google platform was an
4 unreasonable restraint on trade. Google played such an extensive enough role in the on-line
5 advertising market as to significantly impair competition by treating some sellers differently
6 from others.
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8 22. The restraint was unreasonable in that, on the one hand Google suspended Tech
9 Eyes from advertising on the Google platform merely because Tech Eyes restored rifle scopes
10 onto Tech Eyes' own website, while on the other hand Google did not suspend advertising on the
11 Google platform by Tech Eyes' competitors, despite that those companies: (1) sold rifle scopes
12 on their own respective websites; (2) advertised rifle scopes on the Google platform; and, (3)
13 sold rifles and handguns on their own respective websites (which Tech Eyes has never done).
14

15 23. Google's suspension of Tech Eyes was in bad faith, in particular given that the
16 same type of products forming the basis of Google's suspension of Tech Eyes were advertised by
17 other competitors on the Google platform. As just one example of many, Cabela's advertised on
18 the Google platform the Viridian Universal Sub-Compact Laser Sight, which Cabela's touted as
19 the "world's only subcompact weapon mountable green laser with a built-in light" that "is so tiny
20 that it tucks neatly between trigger guard and muzzle."
21

22 24. In all events, Tech Eyes entered into the Agreement and spent significant amounts
23 at Google in good faith reliance that Google would not act in a manner so as to deny Tech Eyes
24 the benefits of the Agreement. Google's wrongful and bad faith termination the Agreement
25 caused Tech Eyes to be damaged in the amount of approximately \$2.8 Million. Tech Eyes'
26 damages were substantially compounded by the demonstrable drop in Tech Eyes' organic search
27 exposure caused by Google's wrongful termination of the Agreement.
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31. Plaintiff incorporates herein by reference the allegations set forth above in their entirety.

32. By the activities set forth in the foregoing paragraphs, including but not limited to suspending Tech Eyes from advertising on the Google platform without any adequate justification while permitting others to advertise similar products on the Google platform, Defendants Google and Does 1 through 20, inclusive, and each of them, which at times had unfair bargaining power, breached their duty to deal fairly and in good faith with Plaintiff.

33. Plaintiff has been damaged by the conduct of Defendants Google and Does 1 through 20, inclusive, and each of them, in the amount of approximately \$2.8 Million, as set forth herein.

Negligence

34. Plaintiff incorporates herein by reference the allegations set forth above in their entirety.

35. Defendants Google and Does 1 through 20, inclusive, and each of them, owed Plaintiff a duty to exercise reasonable care.

36. Defendants Google and Does 1 through 20, inclusive, and each of them breached their duty of care by unilaterally suspending Tech Eyes from advertising on the Google platform for some alleged policy violation. In fact, the policy was so inadequately defined that other large advertisers were permitted to continue to advertise and sell the same or similar products using the Google platform.

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1 37. By virtue of the acts complained of above, Defendants Google and Does 1
2 through 20, inclusive, and each of them breached their duty of reasonable care to Plaintiff and
3 acted carelessly, negligently and/or recklessly so as to expose Plaintiff to an unreasonable risk of
4 harm. Defendants Google and Does 1 through 20, inclusive, and each of them, knew or in the
5 exercise of reasonable care should have known their actions and omissions posed an
6 unreasonable risk of harm of which Plaintiff was unaware.
7

8 38. The failure to exercise reasonable care and breach of respective duties owed to
9 Plaintiff by Defendants Google and Does 1 through 20, inclusive, and each of them, caused
10 damage to Plaintiff, in the amount of approximately \$2.8 Million, as set forth herein. Had
11 Defendants Google and Does 1 through 20, inclusive, and each of them, exercised reasonable
12 care, Plaintiff would not have been damaged.
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14 **FOURTH CAUSE OF ACTION**
15 **Promissory Estoppel**

16 39. Plaintiff incorporates herein by reference the allegations set forth above in their
17 entirety.
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19 40. By, among other things, entering into the Agreement, Defendants Google and
20 Does 1 through 20, inclusive, and each of them, made a clear and unambiguous promise to
21 provide services per the terms of that Agreement. Plaintiff reasonably and foreseeably relied on
22 the promise made by Defendants Google and Does 1 through 20, inclusive, and each of them.
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24 41. By virtue of the acts complained of above, Defendants Google and Does 1
25 through 20, inclusive, and each of them breached the promise made to Plaintiff, which caused
26 damage to Plaintiff, in the amount of approximately \$2.8 Million, as set forth herein. Injustice
27 can only be avoided by fully enforcing the promise of Defendants Google and Does 1 through
28 20, inclusive, to Plaintiff and permitting advertising of all products sold by Plaintiff.

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FIFTH CAUSE OF ACTION
Interference with Prospective Economic Advantage

42. Plaintiff incorporates herein by reference the allegations set forth above in their entirety.

43. Plaintiff and Defendants Google and Does 1 through 20, inclusive, and each of them, were aware that advertising on Google's platform would have resulted in an economic benefit to Plaintiff. Defendants Google and Does 1 through 20, inclusive, and each of them, engaged in acts that were intended to or negligently interfered in Plaintiff's prospective economic advantage. The acts were independently wrongful in that the acts tended to suppress trade and competition, and permitted some advertisers to sell products which Tech Eyes was not permitted to advertise.

44. By virtue of the acts complained of above, Defendants Google and Does 1 through 20, inclusive, and each of them engaged in wrongful conduct that interfered in Plaintiff's business and economic advantage, thereby causing damages and harm to Plaintiff as described herein.

45. The wrongful conduct of Defendants Google and Does 1 through 20, inclusive, and each of them, as described herein was a substantial factor in causing damage to Plaintiff, in the amount of approximately \$2.8 Million, as set forth herein.

SIXTH CAUSE OF ACTION
Unfair Business Practices Pursuant to Business and Professions Code §17200, et seq. –
Unfair Competition

46. Plaintiff incorporates herein by reference the allegations set forth above in their entirety.

47. Defendants Google and Does 1 through 20, inclusive, and each of them, by virtue of the actions and failures to act have committed violations of Business and Professions Code §17200, et seq., by engaging in unfair business practices and unfair competition.

1 48. On October 23, 2014, Google informed Tech Eyes that it had unilaterally
2 suspended Tech Eyes from advertising on the Google platform, despite having been paid by Tech
3 Eyes for using the Google platform. The only reason given to Tech Eyes was that Tech Eyes
4 sold "weapons" on Tech Eyes' own website, which policy was unreasonably enforced against
5 only some users of the Google advertising platform, but not others.

6 49. Google suspended Tech Eyes' advertisements solely because Tech Eyes sold
7 knives and crossbows on Tech Eyes' own website. The suspension was not based on any Tech
8 Eyes advertisements for "weapons" on the Google platform because there were no such
9 advertisements.

10 50. Tech Eyes immediately removed all knives and crossbows from Tech Eyes' own
11 website, and also complied with Google's additional demand that Tech Eyes remove all rifle
12 scopes from Tech Eyes' own website. Google then reinstated Tech Eyes' advertising on the
13 Google platform.

14 51. In the summer of 2015, Tech Eyes restored rifle scopes, which are approximately
15 ninety percent (90%) of Tech Eyes' sales and crucial to the company's survival, onto Tech Eyes'
16 own website. Tech Eyes only did so after learning that its major competitors were permitted to
17 advertise rifle scopes on the Google platform.

18 52. Despite that Tech Eyes did not advertise rifle scopes on the Google platform (in
19 contrast to its major competitors), but rather only restored the rifle scopes onto Tech Eyes' own
20 website, Google immediately again suspended Tech Eyes from advertising on the Google
21 platform. Google did not suspend advertising of similar items by Tech Eyes' competitors.
22 Google's refusal to allow Plaintiff to advertise on Google's platform was an unreasonable
23 restraint on trade, and Google played a large enough role in the on-line advertising market as to
24 significantly impair competition by treating some advertisers and sellers of scopes differently
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1 from others. The restraint was unreasonable in that some advertisers were allowed to advertise
2 scopes similar or identical to those sold by the Plaintiff, whereas Plaintiff was suspended when it
3 tried to sell scopes on Tech Eyes' own website. Google's suspension of Tech Eyes was in bad
4 faith given that the very same products forming the basis of Google's suspension of Tech Eyes
5 were and continue to be advertised by other companies on the Google platform.
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7 53. Google's suspension of Tech Eyes advertising on the Google platform was in bad
8 faith given that Tech Eyes' major competitors not only advertise rifle scopes and laser sights on
9 the Google platform, but also sell rifles and handguns, among other weapons, on their respective
10 websites, whereas, Tech Eyes was suspended for selling knives and crossbows and rifle scopes
11 from Tech Eyes' own website.
12

13 54. Tech Eyes was suspended from Google's advertising platform based upon an
14 unreasonable and arbitrary act by Google, which caused substantial damage to the plaintiff who
15 was paying to advertise on the Google platform. Google's wrongful termination of the
16 Agreement caused a significant hardship and demonstrable decrease in Tech Eyes' organic
17 search exposure, substantially compounding Tech Eyes' damages. Google's activity in
18 permitting some advertisers to advertise and sell the very products that Plaintiff was denied the
19 opportunity to advertise and sell restrains trade, and such restraint is likely to be of significant
20 magnitude.
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22 55. Plaintiff demanded detailed the breaches and violations described hereinabove to
23 Defendant Google. Defendant Google failed and refused to comply with Plaintiff's reasonable
24 requests.
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26 56. In breaching said Business and Professions Code provisions, Defendants Google
27 and Does 1 through 20, inclusive, and each of them acted with oppression, fraud, or malice.
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1 57. As an actual and proximate result of the violation of said Business and
2 Professions Code provisions described herein by Defendants Google and Does 1 through 20,
3 inclusive, and each of them, Plaintiff has been injured in the amount of approximately \$2.8
4 Million, as set forth herein.

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6 **V.**
PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff hereby requests that this Court award it damages in an amount
8 to be proven at trial, including but not limited to:

- 9
10 1. For general, compensatory and consequential damages according to proof, but in all
11 events no less than \$2.8 Million or such other amount that may be shown at trial;
12 2. For restitution and injunctive relief, preventing Google from suspending Plaintiff
13 from advertising on the Google platform;
14 3. For judgment declaring the respective rights, duties and obligations of the Plaintiff,
15 Defendants, and each of them, with respect to the Google's advertising policy and
16 Plaintiff's right to sell items on its own website;
17 4. For costs of suit incurred herein, and a reasonable attorneys fee, if permitted by
18 contract or statute;
19 5. For penalties permitted by statute, including treble damages if permitted by statute;
20 6. For pre and post-judgment interest according to proof;
21 7. For exemplary and punitive damages; and,
22 8. For such other and further relief as the Court deems just and proper.

23 Dated: December 23, 2015

Respectfully Submitted,



By: _____

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Christopher Mader, Esq.
BALDWIN MADER LAW GROUP
Attorneys for Plaintiff Tech Eyes, Inc.